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Written Testimony of Charter Communications, Inc.

**before the Joint Standing Committee on Energy, Utilities and Technology
on**

**LD 2031, An Act To Require a Cable System Operator To Provide a Pro Rata Credit
When Service Is Cancelled by a Subscriber**

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Thank you for the opportunity to provide written testimony in opposition to LD 2031.

Charter Communications serves several hundred thousand customers in 291 Maine communities across the state. Charter has long faced competition in Maine from satellite providers like DIRECTV and DISH. The last few years have seen the emergence of new online competitors, including providers that offer a full suite of cable and broadcast programming services as well as on-demand offerings. Few if any of these entities prorate the bills of customers who cancel service in the middle of a billing cycle. By requiring cable operators to prorate customer bills, LD 2031 would unfairly penalize Charter and other cable operators and put them at a marketplace disadvantage compared to their satellite and online competitors.

LD 2031 also violates federal law. Multiple courts and the FCC have concluded that a requirement to prorate bills is a form of rate regulation. It is therefore barred by the Federal Cable Act because the FCC has determined that cable operators in Maine are subject to effective competition and therefore exempt from such regulation.

Charter's Whole-Month Billing Policy

Charter has long sold cable service to customers on a monthly basis, charging for service at the beginning of each billing period. Since 2019, consistent with this longstanding practice, Charter ceased providing refunds to customers who request to terminate service in the middle of a billing period. Prior to changing its policy, Charter provided 30 days' advance notice to customers that it would begin enforcing its monthly billing policy. Under this "whole-month" billing policy,

those customers can continue to receive service until the end of the billing period. Charter's Terms of Service clearly spell out this policy, providing clear notice that if a customer cancels his or her service mid-month, that customer receives the full month of cable service already paid for: aside from the introductory promotional period, a "[s]ubscriber shall be responsible for the full monthly charge (without pro-ration) for those Services that are offered on a monthly subscription basis to which the Subscriber has subscribed."¹ Similar language is included on each monthly service bill.

Whole Month Billing Has Become the Norm in Today's Video Marketplace

Requiring cable operators to offer prorated refunds would disadvantage them in today's marketplace and harm consumers. Cable operators such as Charter do not merely compete with other cable operators; they operate in a crowded video-content marketplace that includes traditional service providers, satellite video providers, and as well rapidly-growing online streaming services. For most of these companies, month-to-month billing with no proration is the norm. Customers are generally billed for service in advance; if a customer cancels service mid-month, the customer receives the full month of cable service already paid for, and receives no further bills.

Whole-month billing simplifies consumer bills and eliminates the confusion associated with prorated credits. Implementation of whole-month billing has helped level the playing field between Charter and many of its competitors and ensures that Charter can deliver competitively-priced service to customers. The proration requirement in LD 2031 would undermine these benefits and put Charter and other cable operators at an unfair competitive disadvantage vis-à-vis their unregulated competitors. If forced to comply with LD 2031, Charter expects the costs will

¹ See <https://www.spectrum.com/content/spectrum/residential/en/policies/residential-terms.html>

put upward pressure on rates for continuing customers. New changes to billing policies could also introduce customer confusion.

LD 2031 is Unlawful Rate Regulation and Therefore Preempted

In addition to harming consumers and disadvantaging cable operators in the marketplace, LD 2031's proration requirement would violate federal law. Congress enacted the Federal Cable Act to establish a national policy concerning cable communications, and the Act reflects congressional intent to define the limits of state and local authority to regulate cable systems and minimize unnecessary regulations that would impose an undue economic burden on those systems. Of direct relevance to LD 2031, the Federal Cable Act expressly prohibits any regulation—by federal, state, or franchising authority officials—of the rates of cable systems that the FCC has found to be subject to effective competition.² As an effort to regulate cable rates in Maine, LD 2031 is preempted by the Federal Cable Act.

First, Maine's cable systems are subject to effective competition.³ Therefore, Maine is barred from regulating cable operator's rates for service. Second, proration requirements like the one in LD 2031 are rate regulation and thus come within the Federal Cable Act's preemption of such regulation. When a franchise authority requires that a cable operator offer prorated refunds, it is effectively requiring that the cable operator bill customers in daily rather than monthly increments. Regulating the increment in which an operator can bill customers, e.g., daily, weekly,

² 47 U.S.C. § 543(a)(2).

³ See, e.g., *In re Time Warner Cable Inc.*, 23 FCC Rcd. 7131, 2008 WL 1930561 (2008); *In re Comcast Cable Comm'ns, LLC*, 23 FCC Rcd. 6883, 2008 WL 1848984 (2008); see also Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act, 30 FCC Rcd. 6574 (2015) (codified at 47 C.F.R. § 76.906) (adopting a nationwide rebuttable presumption that all cable systems are subject to effective competition).

monthly, is regulating the operator's rates. That is because a "rate" is not just the amount an entity can charge, but the charge for a *specific quantity* of items or services. For example, \$30 is not a rate; \$30 *per month* is a rate.

Courts that have examined this issue have concluded that proration requirements are rate regulation.⁴ One of these courts preliminarily enjoined a regulation requiring that cable operators offer prorated refunds, precisely the requirement proposed in LD 2031, finding that the requirement likely was preempted by federal law.⁵ The FCC has reached a similar conclusion in the context of cellular phone service, holding that state laws prohibiting cellular operators from charging customers in whole minute increments would constitute rate regulation.⁶ This finding is directly applicable to LD 2031, which also effectively seeks to regulate the unit of time for which cable operators can charge a terminating customer for a service—e.g., by the day rather than by the month. And like the requirement considered by the FCC, LD 2031's mandate also constitutes rate regulation.

Conclusion

LD 2031 would impose a mandate on cable operators that none of cable's competitors face, and thereby create an uneven playing field that disserves consumers and increases cable operators' costs. Moreover, that mandate is preempted under federal law. Accordingly, Charter vigorously opposes LD 2031 and respectfully urges the Joint Committee to reject it.

⁴ *Windstream Nebraska, Inc. v. Nebraska Public Service Commission*, No. CI-10-2399, 2011 WL 13359491 (Neb. Dist. Ct. June 9, 2011); *Altice USA, Inc. v. New Jersey Board of Public Utilities*, No. No. 319-cv-21371, 2020 WL 359398 (D.N.J. Jan. 22, 2020).

⁵ *Altice*, 2020 WL 359398, at *8.

⁶ See *In re Southwestern Bell Mobile Sys., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 19898, 19908 ¶ 23 (1999).